IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 501 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PURVANG UMESHCHANDRA SHAH

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioners

MR KC SHAH APP for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 22/08/2000

ORAL JUDGEMENT

This revision is directed against an order dated 19.9.1997 of Additional Sessions, Surat, rejecting the application of the revisionist for not taking cognizance of the offence punishable under Sections 376, 506(2) and

section 114 of the Indian Penal Code as well as under Section 3(11) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Shri K.J. Shethna, learned counsel for the revisionists, and Shri K.C. Shah, learned counsel for the respondent - State of Gujarat, have been heard.

3 Shri Shethna has raised two points assailing the impugned order. His first contention has been that the Sessions Judge (Special Judge under the Atrocities Act) could not have taken the cognizance of the offence u/s 3 (11) of the Act directly without being committed by the concerned Magistrate having jurisdiction to conduct enquiry in the case. His next contention has been that two distinct offences committed on different dates were included in one charge sheet and such charge sheet was illegal and no cognizance of two different offences committed on different dates could be taken by the learned Additional Sessions Judge.

4 In support of his first contention, Shri Shethna has relied upon the Apex Court's verdict in the case of GANGULA ASHOK V. STATE OF ANDHRA PRADESH reported in AIR 2000 SC 740. In reply to this contention, Shri K.C. Shah representing the respondent has contended that the Additional Sessions Judge has given cogent reasons for taking cognizance and he could have taken cognizance of the offence and the contention to the contrary cannot be accepted.

5 A bare look into the provisions of the Atrocities Act would make it clear that this is not a complete Code so far as procedure to be followed by the Special Court in conducting the trial is concerned. Section 2(d) of the Act defines a "Special Court" a Court of Session specified as a Special Court in Section 14. Section 14 in Chapter IV provides that for the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act. Beyond this nothing is provided either under Section 14 or under any of the Setions from Section 1 to 23 of this short Act. It is also not provided what procedure is to be followed by the Special Court while trying an offence punishable under the Prevention of Atrocities Act. Consequently, for conducting the trial the Special Court has to look to the provisions of the Code of Criminal Procedure and if this is so, committal proceedings are necessary and no direct

cognizance can be taken by the Special Judge. The ratio of the Apex Court in Gangula Ashok (supra) is also to the same effect. The Apex Court in this case has considered the provisions of Section 4(2), 5, 193, 227, 204 and 211 of the Code of Criminal Procedure. The Apex Court in this case very clearly laid down that under the Prevention of Atrocities Act the Special Judge who is nothing but a Sessions Judge as defined under Code of Criminal Procedure cannot take cognizance of a case directly by receiving the charge sheet from the police. On the other hand, according to the Apex Court, necessary procedure for enquiry and committal of the case is required to be undertaken before the competent Magistrate in this behalf. It was a case from Andhra Pradesh High Court where identical question was involved. In view of clear observations of the Apex Court that the Special Court cannot take cognizance directly as a Court of original jurisdiction without the case being committed to it by the Magistrate, in view of Section 193 of the Code of Criminal Procedure there remains little scope for the Special Judge under the Prevention of Atrocities Act in accepting the charge sheet directly from the police and in undue haste for a speedy trial, for the purpose of which a Special Court is created, can byepass the provisions of Code of Criminal Procedure, especially Section 193 of it. The Apex Court also laid down that if there is any contrary provision under a special law, then of course, the provisions of the Code of Criminal Procedure will not prevail and the Special Judge has to proceed in accordance with the provisions contained in the Prevention of Attrocities Act for conducting trials by the Special Judge but he has to follow the procedure prescribed under the Code of Criminal Procedure.

6 In the result, I do not find any substance in the argument of Shri K.C. Shah that for the reasons given by the Special Judge, he acquired jurisdiction to conduct the trial of 3 revisionists before him. The Court below was therefore in obvious error in rejecting the application of the revisionist for not taking cognizance of the case directly without following committal proceedings by the competent Magistrate.

7 So far as second contention of Shri K.J. Shethna is concerned, it is not necessary to express any opinion whether there could be composite trial of two different offences committed on different dates having an interval of 8 months. This matter is left open to be considered by the competent Court.

8 In the result, the revision succeeds and is

hereby allowed. The impugned order under revision is set aside. The Addional Sessions Judge, Surat, is directed to return the charge sheet to the Police Officer for being presented to the competent Magistrate who shall conduct the enquiry proceedings for committing the case to the Court of Sessions and the Special Judge on receiving the committal proceedings shall proceed to deal with the same in accordance with law under the Atrocities Act as well as under the Code of Criminal Procedure and the IPC.

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